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COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

P.O. BOX 2120

RICHMOND, VA. 23218-2120

April 11, 2001

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

Dear Ms. Salas:

Enclosed please find an original and four copies of an appeal by the Virginia Department of Education of an Administrator's Decision dated March 30, 2001.

This appeal should be filed under CC Docket Numbers 96-45 and 97-21/ If you have any questions regarding this appeal, do not hesitate to contact me at (804) 692-0335.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Weisiger".

Greg Weisiger  
Virginia Department of Education

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Before the  
Federal Communications Commission  
Washington, DC

ORIGINAL

In the Matter of:

Request for Review of Decision of )  
the Universal Service Fund Administrator by the )  
Virginia Department of Education )  
Richmond, Virginia )

Federal-State Joint Board on Universal Service ) CC Docket No. 96-45

Changes to the Board of Directors of the ) CC Docket No. 97-21  
National Exchange Carrier Association, Inc. )

Re: Billed Entity Number: 126512  
471 Application Number: 163045  
Funding Request Number: 344585  
SLD Correspondence: March 30, 2001

In accordance with Title 47, Chapter 1, Part 54, Section 54.722(b) of the Code of Federal Regulations, The Virginia Department of Education (DOE) submits an original and four copies of this Petition for Review of an Administrator Decision to the Common Carrier Bureau (CCB). In correspondence dated March 30, 2001 the Schools and Libraries Division (SLD) issued an Administrator's Decision on Appeal to DOE denying an appeal made by DOE of the above E-Rate funding request. The Department provides to the CCB additional facts in this case and requests that the CCB overturn SLD's decision.

#### **Background**

For E-Rate funding year three (2000-2001), DOE submitted an E-Rate Form 471 within the designated year three filing window for discounts on a contract for telecommunications services provided by Autotote Communications Services on behalf of Virginia public schools with students enrolled in DOE's

distance learning program. The contract was signed after DOE posted a Form 470 on the SLD Web site for at least 28 days. A copy of the Request for Proposal is listed as exhibit A. Clearly listed as requirement 2 of the RFP is that vendors must be qualified common carriers.

At issue in this appeal is whether Autotote Communications Services is a common carrier as defined in Title 47, Chapter 1, Part 54, Section 54.706. In this instance, DOE believes Autotote passes the tests for common carriers listed in the Iowa decision (FCC 00-449) and relied on the best available information to determine its company status for compliance with E-Rate regulations. Also, DOE believes FCC instructions for designating common carriers on FCC Form 498 and FCC Form 457 were then, and continue to be, unclear and misleading for non-traditional telecommunications providers. Had the Form 498 instructions been more explicit, Autotote most probably would have selected the correct category of service provider to be called a “common carrier.”

In Joplin (FCC DA 99-2798), the FCC remanded to the SLD Joplin’s application for review citing a discrepancy between the service provider type designation provided by Joplin’s vendor and state law, which recognized the vendor as a common carrier. Both Autotote and Empire Electric (Joplin’s vendor) designated themselves as “PRIV” carriers on the Form 498. DOE will demonstrate that the instructions for filing the Form 498 can lead to confusion for non-traditional telecommunications carriers such as Autotote and Empire.

### **Discussion**

At issue with this appeal is the common carrier status of Autotote Communications. In the Joplin decision, issued on December 14, 1999 the FCC

remanded the application to SLD with instructions to consider further Empire Electric's status as a telecommunications common carrier. In November 2000 the SLD announced at a public forum that Joplin had been granted funding, largely because it was certified as a telecommunications common carrier by the Missouri Public Service Commission. In the Joplin decision the FCC also indicated that companies that complete the FCC Form 498 listing their principal business as either "PRIV" or "NTP" would not be considered common carriers. Joplin was remanded because of conflicting evidence regarding Empire's status. Autotote, like Empire, listed its principal communications business on the Form 498 as "PRIV" but because of the national reach of satellite communication, no state PUC certifies Autotote as a common carrier. DOE believes the instructions for completing the Form 498 may mislead filers, particularly filers associated with companies providing telecommunications services other than traditional telephone service. On the Form 498 there are 20 categories filers may choose. Neither the SLD nor FCC have provided a list of which categories qualify as telecommunications common carriers, despite repeated requests for this information. The definition of "PRIV" is "Private Service Providers – offers telecommunications to others for a fee. This would include a company that offers excess capacity on a private system that is used primarily for internal purposes." DOE contends that according to this definition, Autotote could still be considered a telecommunications common carrier. The satellite capacity Autotote sells outside its private use is offered to the public on a non-discriminatory basis. DOE included in its SLD appeal evidence that Autotote advertised its services in trade publications. It is not Autotote's "...practice ... to make individualized decisions,

in particular cases, whether and on what terms to deal..." Rather, Autotote sells time to all customers able to pay. Autotote also passes the second test for common carriers by providing users with raw satellite bandwidth and "...allows customers to transmit intelligence of their own design and choosing." FCC regulatory language does not quantify the amount of telecommunications services a vendor must provide to the public in order to be qualified as a common carrier, simply that "...it holds itself out to provide service generally to the public for a fee." DOE believes Autotote meets these requirements.

In an April 24, 1999 letter to Ms. Dorothy Attwood at the FCC, Mr. Greg Weisiger, at the prompting of FCC Commissioner Powell, provided information concerning companies apparently offering interstate telecommunications services via satellite that had failed to file FCC Form 457. Mr. Weisiger pointed out that approximately seventy five percent of the satellite companies listed in a national trade publication failed to file the Form 457. He suggested the companies, because they had not previously been subject to Universal Service regulation, were simply unaware of its existence. DOE is unaware of any subsequent FCC follow-up or outreach to these types of telecommunications providers. It is therefore DOE's conclusion that many non-traditional telecommunications carriers remain unaware of new Universal Service regulations.

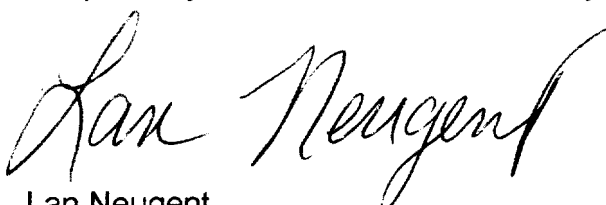
### **Conclusion**

DOE asks that the FCC consider this appeal on its merits and grant funding for program year three. DOE has also requested certain information from the Universal Service Administrative Company concerning a similar year two

appeal (January 11, 2000 letters to Cheryl Parrino and Schools and Libraries Division Board). DOE feels this information is crucial to both the year two application and this appeal. When the requested information is provided, DOE will submit additional supporting documentation for this appeal.

This appeal was initially delivered by DOE to SLD in correspondence dated May 10, 2000. SLD rendered its decision on March 30, 2001 – almost eleven months after DOE's appeal was received by SLD. Fortunately, DOE and the Commonwealth of Virginia have adequate resources to pay full price for services received during this appeal process. Many applicants, particularly those eligible for high percentage discounts are unable to afford the full price of services while appeals are pendent. Therefore, DOE asks that the FCC require SLD to act on appeals within 90 days of receipt. This requirement would comport with appeal timelines imposed upon the FCC and would greatly assist the most disadvantaged E-Rate applicants.

Respectfully submitted this eleventh day of April, 2001,



Lan Neugent  
Assistant Superintendent for Technology

Virginia Department of Education  
P.O. Box 2120  
Richmond, Virginia 23219-2120

ATTACHMENT "A"

COMMONWEALTH OF VIRGINIA

Department of Information Technology

SOLICITATION, OFFER AND AWARD  
DATA PROCESSING / TELECOMMUNICATIONS

FIN: 13-3804001

1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:
VA-000113-AUTO	00-011	Dec 3, 1999	Dec 28, 1999	N/A	B-26

For Information Call: David Butler (804) 371-5521

## 6. ISSUING OFFICE:

Department of Information Technology  
Acquisition Services Division  
110 S. 7th Street, Lobby Floor  
Richmond, Va. 23219  
ATTN: Bid Section

## 7. SHIP TO:

Department of Education  
Mr. Greg Weisiger  
Div of Technology Production Svcs  
Monroe Bldg, 101 N. 14th St.  
Richmond, Virginia 23219

## SOLICITATION

8. Sealed bid(s) for furnishing the equipment, software or services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Dec 28, 1999.

CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions

This is an advertised solicitation which consists of (1) the schedule of equipment, software and services, pages 2 thru 5; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-9; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference.

Offers will be publicly opened at: 2:10 p.m. local time Dec 28, 1999, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.

All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.

Larry F. Schucht, Director  
Acquisition Services

  
Signature

## OFFER

In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.

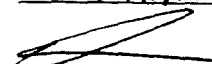
## 9. CONTRACTOR:

## 10. BILL TO:

Company Name: Autotote Communication Services

Address: 750 Lexington Ave, 25<sup>th</sup> Flr

City, State: New York, NY 10022

Signature: 

Name (Typed): KEVIN MULHANE

Title: BUSINESS DEVELOPMENT

Phone: 212-318-9147 (Voicemail)

DEPARTMENT OF EDUCATION  
Division of Finance  
P.O. Box 2120  
Richmond, VA 23216-2120

## AWARD

## 11. Accepted as to Item Numbers:

## 12. Amount:

## 13. Award Date:

2 and 3 and exhibit 1, incorporated herein.

\$373,100.<sup>60</sup>

JANUARY 13, 00

## 14. Name of Contracting Officer:

Jeff Davis  
Contracts Manager

## 15. COMMONWEALTH OF VIRGINIA

By: 

## PAGES:

1 of 5

DIT-62A		SCHEDULE		IFB NO.		Page:	
01/15/91				00-011		2 of 5	
NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:		INITIALS		
Autotote Communication Services			(RDD) See Schedule		K2		
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE		
	<p>The Commonwealth desires to purchase analog C-band transponder (Pre-emptible with 60 days notice) time from July 1, 2000 through June 30, 2001.</p> <p>Vendors may bid one of two options:</p> <p>* 1. Channels A, B and C must be consistently on the same satellite, same polarity* and same respective transponders for each respective semester.</p> <p style="text-align: center;">* see below.</p> <p>A. Channel Hours</p> <p>Channel A: Monday-Friday 08:25am-12:25am Channel B: Monday-Friday 08:25am-13:25pm Channel C: Monday-Friday 08:25am-12:25pm</p> <p>B. Scheduled Dates</p> <p>Channels A and B:</p> <p>September 5, 2000 through June 8, 2001 except November 7, 23-24; December 25-29, 1999 and January 17, 2000.</p> <p>Channel C:</p> <p>August 28, 2000 through June 1, 2001 except September 4; November 7, 22-24; December 25-29, 2000.</p> <p style="text-align: center;">OR</p> <p>* 2. Channels A and B must be on the same polarity and same satellite. Channel C must be on the same satellite but may have a different polarity. (Channel hours &amp; scheduled dates are the same as 1A and 1B).</p> <p>3. OPTIONAL: Additional ad hoc hours currently unscheduled on the same satellite as Line Items 1 &amp; 2, See Note #9.</p> <p>TOTAL ITEMS</p> <p>* CHANNEL A = GE2, TX20 CHANNEL B = GE2, TX24 CHANNEL C = GE2, TX23 } Definite (Guaranteed) Assignments</p> <p>We May (at start of schedule) be able to provide 3 Tx at same polarity</p>	2340	hr.	<del>\$146.89</del>	<del>\$343,722.60</del>		
		2340	ea.	<del>\$146.89</del>	<del>\$343,722.60</del>		
		200	hr.	<del>\$146.89</del>	<del>\$29,378.00</del>		
					<del>\$373,100.60</del>		



DIT-62A	SCHEDULE	IFB NO.	Page:
01/15/91		00-011	3 of 5

NAME OF CONTRACTOR	REQUIRED DELIVERY DATE:	INITIALS
<i>Autotote Communication Services</i>	(RDD) See Schedule	<i>KMM</i>

- Items #1 or #2 and #3, if awarded, will be awarded individually to the responsive and responsible vendor with the lowest cost for each item.
- Vendors responding to this solicitation must be qualified "Common Carriers" as defined by the Federal Communications Commission (FCC). Vendors must provide the Department of Education (DOE) with their Service Provider Identification Number (SPIN) provided by the Universal Service Administration Company (USAC). Please provide SPIN in following space 143013740.
- BIDS WILL NOT BE CONSIDERED IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A registration form may be obtained by calling (804) 371-5900 or by visiting the Acquisition Services web site listed below. The completed form must be received by DIT not later than the award date in order for the bid to be considered.
- The Acquisition Services Division of DIT maintains a web site with a URL of <http://asd.state.va.us>. This web site provides information about ASD and acquisitions conducted by ASD for Information Technology related items. Vendors are invited to check this site regularly.
- Neither DIT nor the Department of Education (DOE) will sign or execute any other contract, license, or other agreements containing contractual terms and conditions as a result of this procurement. Vendors should read and understand all of the terms and conditions prior to submission of a bid.
- "NO BIDS" are not required.
- Vendors submitting multiple bids must submit them in separate packages.
- Results of this solicitation will not be given out by telephone. Vendors wishing a copy of the bid results must submit a self-addressed, stamped envelope along with their bid. The envelope should be marked with the words "Bid Results" and the IFB number. Results will be made available as soon as a decision is made.
- All scheduled time will be on a C-band satellite with transponders with 5.9 to 6.4 GHz with a 36 MHz bandwidth. The satellite must cover the 48 contiguous states. SHARED TRANSPONDERS WILL NOT BE CONSIDERED. There should be no interference with other transponders. All time is scheduled in Eastern Standard/Eastern Daylight Savings Time.
- The rate for item #1 or #2 on the Schedule (page 2) of this solicitation shall be given as a flat rate, i.e., prime and non-prime rate differentials will NOT be accepted. Bidding the optional unscheduled hours, item #3, is not required. If Vendor bids the option, the price shall be the same as items #1 or #2. Vendor is only required to provide the optional ad hoc hours if convenient to the Vendor's schedule.

DIT-62A	SCHEDULE	IFB NO.	Page:
01/15/91		00-011	4 of 5

NAME OF CONTRACTOR	REQUIRED DELIVERY DATE:	INITIALS
<i>Autobate Communications Services</i>	(RDD) See Schedule	<i>KA</i>

11. The Vendor shall agree to participate in the federal universal service discount program (E-rate) by passing appropriate discounts to the user, should the contractor receive discount commitments from the universal service administrator.
12. DOE reserves the right to cancel scheduled events without charge prior to sixty (60) calendar days of the scheduled event.
13. Contingency plans must be available for rapid restoration of services in the event of channel outage. Notification and status reporting to DOE is required within five (5) minutes after failure. A description of the failure and estimated time to repair must be included in the report.
14. Monthly bills will be provided in a format determined by DOE. The minimum billing unit of an event is fifteen (15) minutes, not necessarily beginning on the quarter hour. The Commonwealth shall only pay for the actual hours scheduled/ordered.
15. All channel, schedule and calendar information is provided as indicated on the Schedule (page 2) of this solicitation.
16. Vendor shall include specific satellites and transponders being bid for items #1 or #2 and #3, if applicable, in their response.
17. Vendor shall provide Fall and Spring sun outage information three (3) weeks prior to the onset of outages.
18. Vendor shall not bid transponder time on satellites that are in or are scheduled to be placed in an "inclined orbit" during the contract period unless the satellite owner and vendor guarantee that the signal delivered by the satellite is of broadcast quality, i.e., that the new orbit does not allow it to drift outside the "box" causing excessive signal degradation for three (3) meter polar mounted downlinks.
19. Questions concerning this solicitation must be submitted, in writing, to:

Mr. David H. Butler  
Department of Information Technology  
Acquisition Services Division  
110 S. 7th Street, East Lobby  
Richmond, VA 23219

Questions must be received not later than 5:00pm EDT December 15, 1999. No response will be furnished to telephone calls and written questions will not be answered after the due date for questions. Mark the outside of your envelope "Questions Concerning IFB 00-11." Questions may be submitted via facsimile at (804) 371-5969.

DIT-62A	SCHEDULE		IFB NO.	Page:
01/15/91			00-011	5 of 5
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE:	INITIALS	
<i>Autobots Communications Service</i>		(RDD) See Schedule	<i>PRM</i>	

20. Bidder's attention is directed to Section 2.b, page S-1, of the Solicitation Instructions concerning the requirement for Federal Identification Numbers (FIN) to be placed on page 1 of the Invitation for Bids. If this bid was mailed to you, in the initial mailing from DIT, your address label will reflect the FIN number on our file for your company. Please place this number in the space provided on page 1. If the number is incorrect, please provide us the incorrect number and the correct number and we will revise your registration to reflect the correct number. PLEASE NOTE THAT FAILURE TO SUPPLY THIS NUMBER MAY RESULT IN OUR INABILITY TO VERIFY YOUR REGISTRATION AND YOUR BID BEING RULED NON-RESPONSIVE.